

Filed

JAN 27 2015

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIAN YOUNG,

Petitioner,

v.

FAULK, Warden,

Respondent.

No. C 14-04146 EJD (PR)

ORDER OF DISMISSAL; GRANTING
MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

(Docket Nos. 2 & 4)

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state conviction. Petitioner has filed a motion for leave to proceed in forma pauperis. (Docket No. 2.)

BACKGROUND

According to the petition, Petitioner was found guilty of second degree robbery, rape, false imprisonment and evading a peace officer after a jury trial in Alameda County. (Pet. at 2.) Petitioner was sentenced on June 27, 2011. (Id.)

Petitioner appealed his conviction, and the state appellate court affirmed. (Id. at 3.) The state high court denied review. (Id.)

Petitioner filed the instant federal habeas petition on September 15, 2014.

DISCUSSION

A. Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” *Id.* § 2243.

B. Legal Claims

Petitioner claims that the prosecution failed to hand over exculpatory evidence and discovery before the preliminary hearing. (Pet. at 5.) Petitioner currently has another federal habeas petition pending with this Court, which was filed on August 6, 2014, as Case No. C 14-03550 EJD (PR). Therein, Petitioner challenges the same conviction as in this instant action. In the earlier petition, Petitioner claimed several grounds for federal habeas relief, which, liberally construed, the Court found cognizable under § 2254. Respondent was directed to file an answer thereto. (*See* Case No. C 14-03550 EJD (PR), Docket No. 26.)

In the instant petition, Petitioner asserts an additional claim which was not included in the earlier petition. It is not appropriate to file a separate habeas action to raise additional claims when challenging the same conviction. Accordingly, this action must be DISMISSED to Petitioner filing a motion to amend his petition in Case No. C 14-03550 EJD (PR) to include any additional claims.

CONCLUSION

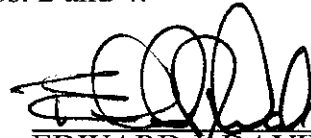
For the foregoing reasons, the instant action is DISMISSED as duplicative. Petitioner’s motion for leave to proceed in forma pauperis, (Docket No. 2), is GRANTED.

Petitioner's motion "for additional exhibit" is DENIED. Petitioner may refile the motion under Case No. 14-03550 EJD (PR), if appropriate. (Docket No. 4.)

This order terminates Docket Nos. 2 and 4.

DATED: _____

1/26/15



EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

BRIAN YOUNG,

Petitioner,

v.

FAULK, Warden,

Respondent.

Case Number: CV14-04146 EJD

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 1/27/15, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Brian Young T-15087
P. O. Box 3030
Susanville, CA 96127

Dated: 1/27/15

Richard W. Wicking, Clerk
By: Elizabeth Garcia, Deputy Clerk